

Exhibit A

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

MARK I. SOKOLOW, et al., Plaintiffs,)	
)	
)	
)	
v.)	
)	No. 1:04-cv-0397 (GBD) (RLE)
)	
PALESTINE LIBERATION ORGANIZATION,)	
et al.,)	
Defendants.)	
)	

**DECLARATION OF SHUKRY BISHARA,
MINISTER OF FINANCE OF THE PALESTINIAN AUTHORITY**

Pursuant to 28 U.S.C. § 1746, I, Shukry Bishara, declare under penalty of perjury as follows:

1. I am over eighteen years old and am competent to make this declaration. Unless otherwise stated herein, the facts set forth below are based on my personal knowledge.
2. I was appointed the Minister of Finance for the Palestinian Authority (“PA”) in June 2013. I added the Planning portfolio and became Minister of Finance and Planning in June 2014.
3. As Minister of Finance, I am primarily responsible for managing the public finance of the Palestinian government, developing and executing the PA’s annual budget, implementing fiscal reforms, and overseeing the national accounting and reporting systems. In addition, I am the principal counterpart for the international donor community, and I oversee, manage and report on foreign financial aid directed to the PA. As part of my responsibilities, I also approve, and obtain PA Cabinet and Legislative Council ratification of, the annual budget of

all PA Ministries and the Palestine Liberation Organization (“PLO”), and I approve the monthly disbursement of funds allocated to the PA Ministries and the PLO under that annual budget.

4. I was born in Jerusalem. I am a Palestinian with dual citizenship of France and Jordan, and hold an Israeli residence card.

5. In 1972, I earned a Bachelor of Arts degree in economics from the American University of Beirut. In 1973, I earned a Master’s degree in economics at University College London.

6. I previously held numerous private sector positions. I was formerly assistant group head for the Middle East and North Africa with Fidelity Bank in the United States between 1973 and 1979. I held numerous executive-level positions from 1980 to 2006 within the Arab Bank, including chief banking officer, senior executive vice president and country head for Palestine, country head for France and regional manager for Europe. I was formerly the chief executive officer of the Housing Bank for Trade and Finance between 2006 and 2009. I served as the chairman of the Palestine Investment Fund from 2006 to 2010, and was vice chairman of the Palestine Power Generation Company from 1999 to 2013. I am also a member of the Board of Trustees of the America University of Madaba in Jordan.

7. This declaration is based on my personal knowledge of the financial condition of the PA and PLO. Since 1993, when the PLO, Israel and the United States created the PA under the Oslo Accords, the PLO has not had any revenue source other than the funding it receives from the PA as previously described. Accordingly, this declaration focuses almost entirely on the PA’s financial obligations and financial condition.

8. Included with this declaration are true and accurate copies of PA financial statements and related reports, including the PA’s most recent monthly reports for January,

February, and March 2015.¹ The PA produces financial reports in accordance with international standards of national accounting and reporting. These reports include a monthly record of financial activity, and are monitored and audited by both internal and external controls. The PA's financial and operational reports and budgets are further monitored and verified by the International Monetary Fund ("IMF") and World Bank resident staff. In the interest of providing greater financial transparency, the PA publishes many of these financial documents and reports through its website, including Monthly Reports, Yearly Reports, Quarterly Reports, Final Accounts, General Debt, and Property Tax Reports, which can be accessed at: <http://www.pmf.ps/en/41>.

9. I understand that this declaration will be submitted in support of a motion by the PA and the PLO requesting that the Court stay the execution of the judgment in this case, and that the Court waive the bond requirement during the time that the PA and PLO appeal the judgment. This declaration is made in order to demonstrate that the PA and the PLO are unable to post a bond or other security because neither has the financial capacity, liquidity, or the access to credit facilities to do so.

The PA's Assets and Income.

10. The PA's grim fiscal condition is a function of its limited stream of revenues, its entrenched deficits, and existing high levels of debt and accumulated arrears.

11. The PA does not have any commercial business interests that generate income. Instead, the primary sources of PA income are indirect taxes, namely customs-clearance revenues, followed by domestic tax revenues, fees and charges. In 2014, the PA's sources of

¹ Exh. 1, PA Fiscal Operations for January 2015 ("PA Jan. 2015 Operations"); Exh. 2, PA Fiscal Operations for February 2015 ("PA Feb. 2015 Operations"); Exh. 25, PA Fiscal Operations for March 2015 ("PA Mar. 2015 Operations").

revenue were: (i) clearance revenues (indirect taxes) resulting from the commercial transactions between Palestine and Israel; (ii) domestic tax revenues collected by the Ministry of Finance, including from income tax, value-added tax, customs, property tax, and other excise revenues; and (iii) domestic non-tax revenues, including fees and licenses collected by various PA government ministries.²

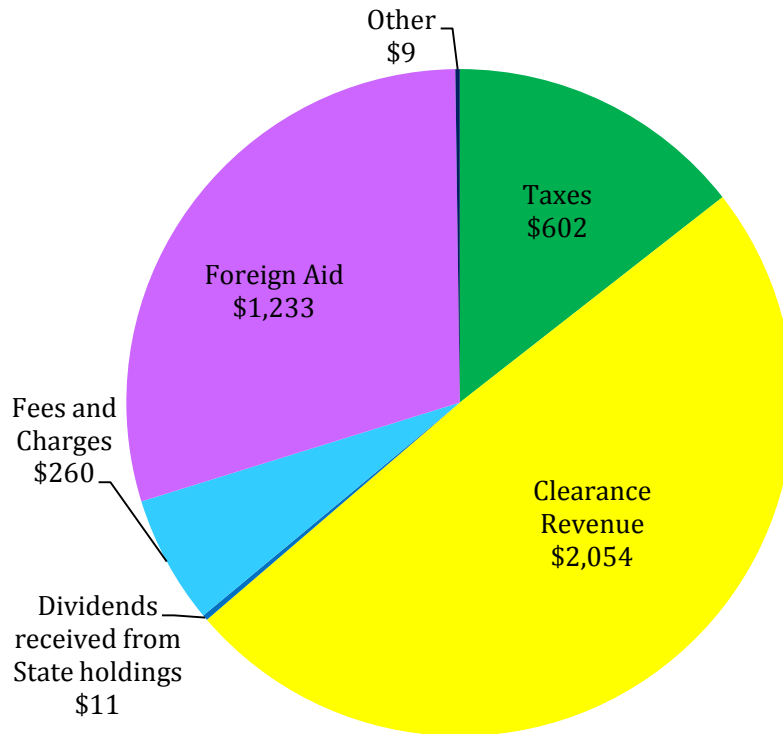
12. Clearance revenues are revenues to the PA in the form of indirect taxes on imported goods.³ Israel collects the taxes and customs duties on the PA's behalf, and is obligated to refund those revenues monthly to the PA. The PA is obligated to transfer onward roughly half of the monthly clearance revenues due from Israel to the Palestinian private sector businesses that paid the customs and clearance charges in advance on goods imported from the Israeli market.

13. Clearance revenues account for the vast majority (approximately 70%) of the PA's expected revenues each month. The following chart summarizing the PA's annual sources of income for 2014 illustrates the importance of the clearance revenues in millions of U.S. dollars:⁴

² See Exh. 3, PA Fiscal Operations for December 2014 ("PA 2014 Operations"), at 4 (Revenues by Source).

³ See Exh. 4, West Bank and Gaza – IMF Assessment Letter for the Norwegian Authorities dated April 8, 2015 ("IMF April 8, 2015 Letter") at 1, *avail. at* <http://www.norway.org.ps/PageFiles/759270/Assessment%20Letter%20for%20Norwegian%20authorities.pdf> (last visited April 9, 2015).

⁴ All of the conversions in this Declaration from new Israeli shekels (NIS) to U.S. dollars are based on the prevailing exchange rate. For 2013, the average rate was 3.61 NIS per dollar for the year; for 2014 the average rate was 3.57 NIS per dollar for the year; for January 2015, the exchange rate was 3.93; and, for February 2015, the rate was 3.90. See Exh. 5, PA Fiscal Operations for December 2013, at 1 (Revenues, Expenditures and Financing Sources (Commitment Basis); Exh. 3, PA 2014 Operations, at 1 (Revenues, Expenditures and Financing Sources (Commitment Basis); Exh. 2, PA Feb. 2015 Operations, at 1 (Revenues, Expenditures and Financing Sources (Commitment Basis)). An exchange rate of 4.00 NIS per dollar is used for all conversions herein later than February 2015. See Exh. 25, PA Mar. 2015 Operations, at 1 (Revenues, Expenditures and Financing Sources (Commitment Basis)).



5

14. The PA's dividends received from State holdings for all of 2014 totaled just NIS 39.6 million (\$11.09 million).⁶

15. The PA does not own any real estate other than property located in Gaza, the West Bank and certain overseas embassies, all of which are used for government operations. Similarly, the PA does not own any buildings, plants or equipment in the West Bank or Gaza other than those being used for government operations.

16. The PA does not sell or lease its land holdings, buildings or other assets in order to generate cash. The PA cannot liquidate any of these government assets without impairing its ability to function and perform its governance duties.

⁵ See Exh. 6, PA Ministry of Finance, Macro-Fiscal Unit, Fiscal Developments: Fourth Quarter and Full Year 2014 ("PA 2014 Fiscal Developments"), at 3-5. "Foreign Aid" includes "External Budgetary Support" and "Development Financing," each of which is tracked separately in PA financial statements. See Exh 3, PA 2014 Operations, at 1.

⁶ See Exh. 3, PA 2014 Operations, at 4 (Revenues by Source).

17. Furthermore, because the PA does not engage in commercial business activities, the PA does not have any accounts receivable.⁷

The PLO's Assets and Income.

18. As previously described, the PLO receives its funding under a budget ratified by the PA Cabinet and Legislative Council. When I approve the monthly disbursement of funds allocated to the PLO under that budget, the PA transfers the funds to the Palestinian National Fund (“PNF”), which is the PLO’s treasury. The PNF disburses funds received from the PA to the PLO for its operating expenses, including salaries for PLO officials and diplomatic corps.

19. The PLO does not prepare financial statements. As explained above, the PLO was in existence before the creation of the PA. After the PA was created, the PLO continued in existence with a focus on conducting the overseas foreign affairs of the Palestinian people. The PLO accounts for the budgeted and allocated funds that are disbursed to it by the PA in keeping with the same PA zero-balance accounting policies that apply to PA Ministries and agencies with “line” functions. This means that, at the end of each month, the accounts of the PLO, like the accounts of PA line Ministries and agencies, have a zero balance in advance of the disbursement of the next month’s transfer of budgeted and allocated funds. The PLO therefore does not have surplus funds received from the PA to use to post security, and does not have other assets available to use for a bond.

⁷ The PA does list “other accounts receivable” (OARs) in its financial documents, but these OARs are not amounts owed to the PA from commercial or business activities. OARs represent amounts that local Palestinian municipalities owe to the PA for public utilities like water and electricity. While the municipalities should pay the Israelis for these utilities directly, Israel obtains payment by deducting the amounts owed from the gross clearance revenues before transferring the remainder of the clearance revenues to the PA. The utility payments are not PA obligations, and are treated by the PA (and the IMF) as “Net Lending” or “Forced Lending.” As a result, the PA lists the utility money it is owed from local municipalities as OARs, akin to a loan owed to the PA, rather than traditional commercial accounts receivable owed for the provision of goods or services in order to obtain a profit. The PA’s OARs for 2013 (the most recent year available) totaled \$72.3 million. *See* Exh. 7, West Bank and Gaza 2013 Statement of Government Operations at 5 (Transactions in Assets and Liabilities).

20. The PLO does not own any businesses that generate revenue.

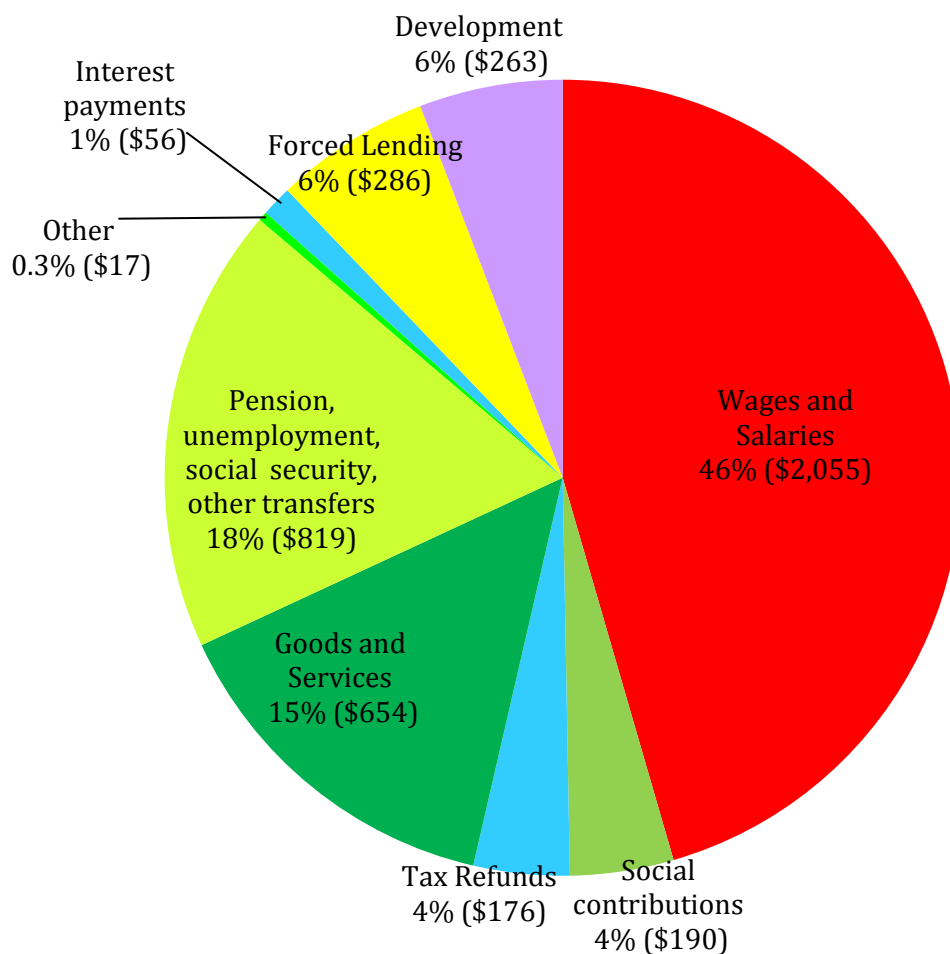
21. The PLO does not own any commercial real estate; instead, its property is comprised of overseas missions and diplomatic offices. Similarly, the PLO does not own any buildings, plants or equipment, other than those used by PLO employees in the course of performing their diplomatic functions.

The PA's Expenditures.

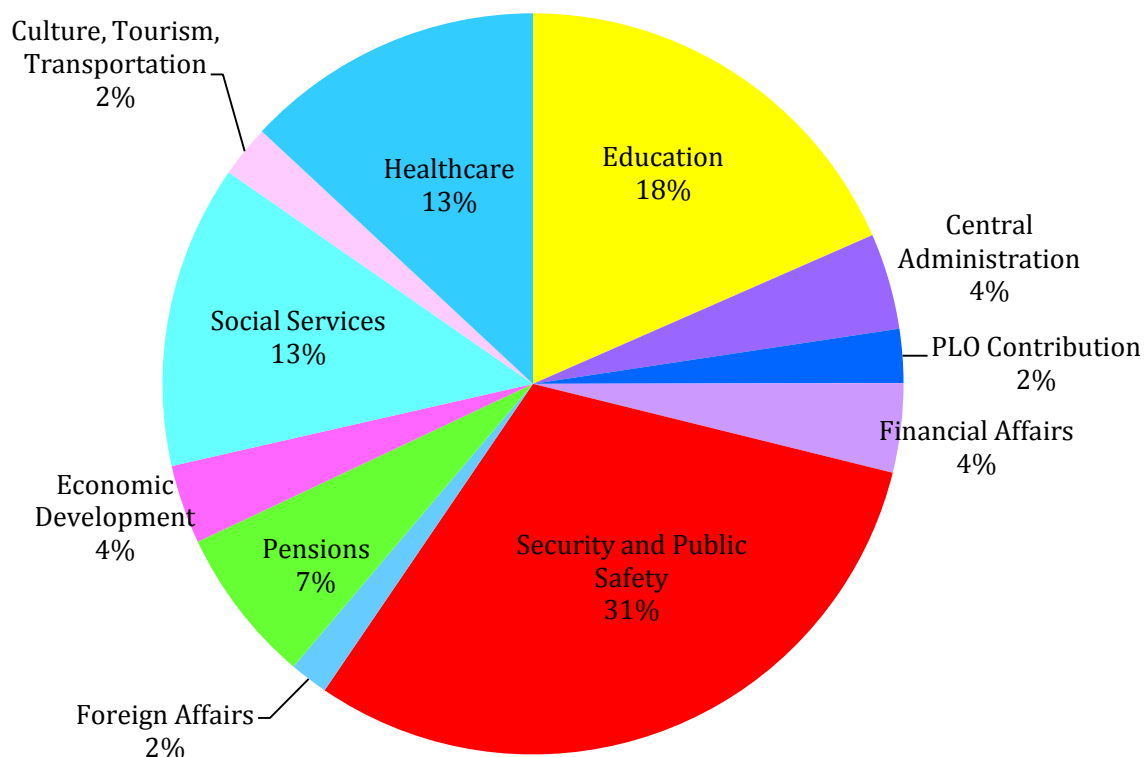
22. The PA funds conventional government services, including developing infrastructure; public safety and the judicial system; health care; public schools and education; foreign affairs; economic development initiatives in agriculture, energy, public works, and public housing; the payment of more than 155,000 government employee salaries and related pension funds; transportation; and, communications and information technology services.⁸

23. The PA's recurrent expenditures go to wages and salaries, social contributions, goods and services that the PA needs to operate, transfers to the social security fund, pensions and other social assistance programs, interest and debt service on existing debt, and public safety and security. The vast majority of these expenditures is for government employee wages and salaries, of which the greatest number of employees are security and public safety personnel. The following two charts demonstrate the proportion of these expenditures for 2014, first by type and then by sector of the Palestinian economy:

⁸ See Exh. 1, PA Jan. 2015 Operations, at 5-6 (Expenditure by PA Organizations); Exh. 11, PA Presentation "Fiscal Reforms, Entrenched Challenges and Future Objectives," April 8, 2015 ("PA April 8, 2015 Presentation"), at 10 (showing 155,682 PA employees in 2014).



⁹ See Exh. 6, PA 2014 Fiscal Developments, at 4-5.



10

The PA's Deficit, Debt and Arrears.

24. For definitional purposes, the PA uses the term “deficits” to describe the amount by which PA expenditures exceed PA revenues. PA “debt” means the amounts that the PA has borrowed from domestic banks, multilateral, quasi-sovereign institutions like the World Bank and the European Investment Bank, and governments, which must be repaid with interest. PA “arrears” can refer to accumulated amounts owed by the PA to the private sector and to public sector employees, payment of which has been deferred due to the PA’s cash constraints, but that must eventually be paid in full. These arrears currently include withheld payments due for goods and services, and interest payments due on existing debt.¹¹

¹⁰ See Exh. 3, PA 2014 Operations, at 7-8 (Expenditure by PA Organizations).

¹¹ See Exh. 6, PA 2014 Fiscal Developments, at 17.

25. The PA historically has operated at a deficit because its income is insufficient to cover its current expenses and debt obligations. The PA's chronic budget deficit is due, further, to the PA's inability to collect taxes, invest in, or develop roughly 63% of the area assigned the PA under the Oslo Accords (specifically, "Area C") as a result of the lack of progress in the peace process. The PA's total budget deficit was \$1.698 billion in 2012;¹² \$1.57 billion in 2013;¹³ and, \$1.59 billion in 2014.¹⁴

26. To reduce these recurring deficits, the PA has implemented reform measures. These include instituting a net-zero hiring freeze, which has been in place since 2012; reducing, with an eye toward eliminating, all fuel subsidies paid by the PA to its citizens; minimizing cost of living and other wage adjustments for PA employees; renegotiating public sector union agreements; and, working to reduce the substantial deductions taken by Israel from the PA clearance revenues prior to Israel remitting the clearance revenues each month.¹⁵ Although it has explored further expenditure cuts, the PA has determined that it cannot implement further cost-cutting initiatives without severely reducing or eliminating the wages of essential public sector employees or social services to the Palestinian people.

¹² See Exh. 9, PA Ministry of Finance Fiscal Developments & Macroeconomic Performance: Fourth Quarter and Fiscal Year 2012 ("PA 2012 Fiscal Developments"), at 5.

¹³ See Exh. 8, State of Palestine Ministry of Finance Fiscal Developments & Macroeconomic Performance: Fourth Quarter and Fiscal Year 2013 ("PA 2013 Fiscal Developments"), at 9.

¹⁴ See Exh. 6, PA 2014 Fiscal Developments, at 3.

¹⁵ In 2014, for example, Israel deducted NIS 872.5M (\$244.40) for electricity bills. See Exh. 10, PA Presentation "Palestinian Government's Reforms-Work In Progress-Challenges and Risks" dated January 2015 ("PA Jan. 2015 Presentation") at 19-34, 42.

27. The PA's historically bleak financial picture began to deteriorate further in December 2014 following Israel's freeze of approximately 70% of the PA's monthly revenues, which amounted to approximately \$100 million per month.¹⁶

28. By April 2015, the Palestinian economy had suffered a severe blow due to the Israeli freeze of clearance revenues. The GDP had contracted by -.37 as compared to the already-anemic growth in 2013.¹⁷ January 2015 exports declined 5%, while imports declined 10%.¹⁸

29. The IMF similarly concluded that the Israeli freeze of clearance revenues had a dramatic negative effect on the Palestinian economy. An April 8, 2015 IMF report stated that "[t]he suspension in January-March 2015 by Israel of clearance revenue, which accounts for two-thirds of overall revenue and is roughly equivalent to the PA's wage bill, caused severe fiscal strains and adversely affected the broader economy."¹⁹

30. In response to this drastic cut in revenue, the PA implemented an emergency cash rationing budget, which required the PA to make equally drastic cuts to its funding for government operations.²⁰ For example, in January 2015, the PA:

- a. cut wages and salaries for PA employees from NIS 607.5 million (\$154.58 million) to NIS 211.8 million (\$53.89 million);²¹

¹⁶ See Exh. 2, PA Feb. 2015 Operations at 3 (Consolidated Statement on Fiscal Operations and Arrears); Exh. 4, IMF April 8, 2015 Letter, at 2.

¹⁷ See Exh. 11, PA April 8, 2015 Presentation, at 4.

¹⁸ See *id.*

¹⁹ See Exh. 4, IMF April 8, 2015 Letter, at 2.

²⁰ See Exh. 10, PA Jan. 2015 Presentation at 42; Exh. 11, PA April 8, 2015 Presentation at 28-30.

²¹ See Exh. 1, PA Jan. 2015 Operations, at 1-3 (Revenues, Expenditures and Financing Sources (Commitment Basis)), (Revenues, Expenditures and Financing Sources (Cash Basis)), & (Consolidated Statement on Fiscal Operations and Arrears).

- b. cut transfers of social assistance benefits, social security and related government assistance payments from NIS 251.5 million (\$64 million) to NIS 204 million (\$51.90 million);²²
- c. eliminated the government's share of contributions to the State pension fund by NIS 57.4 million (\$14.61 million);²³
- d. withheld payments to the private sector for goods and services received from vendors, paying NIS 64 million (\$16.28 million) of NIS 110.1 million (\$28.02 million) owed;²⁴ and,
- e. withheld interest payments due on existing debt, paying NIS 16.9 million (\$4.30 million) of NIS 19.7 million (\$5.01 million) owed.²⁵

31. Though temporary, the emergency rationing is expected to cause lasting harm to the Palestinian economy. As the IMF explained in its April 2015 report, "partial wage payments and other public spending cuts during January-March will likely lead to some reduction in private consumption for the year as a whole, and confidence effects related to the fiscal crisis will limit private investment."²⁶

32. Despite cutting its expenditures by 52.5% in January 2015, the PA had a deficit of NIS 278 million (\$70.74 million) that month, and a February 2015 deficit of NIS 433.1 million

²² *See id.*

²³ *See* Exh. 1, PA Jan. 2015 Operations, at 1-3 (Revenues, Expenditures and Financing Sources (Commitment Basis)), (Revenues, Expenditures and Financing Sources (Cash Basis)), & (Consolidated Statement on Fiscal Operations and Arrears); Exh. 6, PA 2014 Fiscal Developments, at 12 (stating that social contributions are contributions to the pension fund).

²⁴ *See* Exh. 1, PA Jan. 2015 Operations, at 1-3 (Revenues, Expenditures and Financing Sources (Commitment Basis)), (Revenues, Expenditures and Financing Sources (Cash Basis)), & (Consolidated Statement on Fiscal Operations and Arrears).

²⁵ *See id.*

²⁶ *See* Exh. 4, IMF April 8, 2015 Letter, at 2.

(\$111.05 million).²⁷ Although the PA's March financials reflect a partial payment of clearance revenues resulting from an agreement reached for their release on April 17, 2015 (as discussed in Paragraph 38 below), even with this partial payment of clearance revenues, the PA's deficit in March was NIS 440.7 million (\$110.17 million).²⁸

33. No government could survive the sudden loss of 70% of its funding for government operations and social services for its people, but the loss of revenue is even more concerning because of its impact on security and stability in the region.²⁹ In January 2015, the IMF issued a warning that "[s]trong efforts by the PA can only go so far to contain the crisis for a few months. The situation could become untenable, with a growing risk of social unrest and strikes that could lead to political instability. These serious risks could be mitigated if Israel quickly resumed transfers of clearance revenue and donors front loaded their aid."³⁰

34. The PA has been insisting since December 2014 that Israel return the clearance revenues. In early April 2015, Israel expressed a willingness to release some amount of the frozen clearance revenues, but would retain a third of the clearance revenues (NIS 500 million out of NIS 1.5 billion or \$125 million out of \$375 million) for unsubstantiated fees and costs.³¹

²⁷ See Exh. 2, PA Feb. 2015 Operations, at 2 (Revenues, Expenditures and Financing Sources (Cash Basis)).

²⁸ See Exh. 25, PA Mar. 2015 Operations, at 2 (Revenues, Expenditures and Financing Sources (Cash Basis)).

²⁹ See Exh. 12, "Will ICC membership help or hinder the Palestinians' cause?," *BBC News*, available at: <http://www.bbc.com/news/world-middle-east-30744701> (last visited April 29, 2015) ("As a result [of the clearance revenue freeze], 160,000 Palestinian government employees were paid only 60% of their salaries for three months."); Exh. 13, S. Bishara, "The economic siege of Palestine," *Chicago Tribune* ("Chicago Tribune Article"), available at <http://www.chicagotribune.com/news/opinion/commentary/ct-palestine-israel-international-criminal-court-perspec-0227-jm-20150226-story.html> (last visited March 1, 2015).

³⁰ See Exh. 14, IMF Statement at the End of an IMF Mission to the West Bank and Gaza dated January 29, 2015 ("IMF Jan. 29, 2015 Statement"), at 2, available at <http://www.imf.org/external/np/sec/pr/2015/pr1524.htm> (last visited March 1, 2015).

³¹ See Exh. 11, PA April 8, 2015 Presentation at 3; Exh. 15, N. al-Mughrabi and A. Bakr, "Qatar lends Palestinians \$100 million to pay salaries: Palestinians," *Reuters* ("Reuters Article"), available at <http://www.reuters.com/article/2015/04/08/us-israel-palestinians-qatar-idUSKBN0MZ1Q820150408> (last visited April 8, 2015).

Israel made no assurances that it intended to resume regular clearance revenue distributions after April 2015. Further, the Israeli government's offer to remit only a portion of the clearance revenues—net of the Israeli government's unilateral deductions that the PA disputed—was conditional on the understanding that PA acceptance constituted endorsement of the Israeli deductions, and would be in full satisfaction of Israel's obligation to remit the clearance revenues for December 2014 through February 2015. As a result, PA President Mahmoud Abbas determined at that time that it was in the best interests of the Palestinian people to reject Israel's offer to transfer only a portion of the clearance revenues.³²

35. The IMF similarly expressed its concern that only a partial resumption of clearance revenue transfers by Israel would result in even more PA expense cuts, debt and arrears:

[T]he PA will need to compensate for any partial clearance revenue transfers by further expenditure cuts . . . additional borrowing from the banking system, or arrears accumulation Additional borrowing from the banking system may be a possibility, but could breach the [Palestinian Monetary Authority's] indicative prudential limits, and implies increased debt levels and interest costs, which are already projected to rise substantially in 2015. Arrears accumulation would undermine the private sector, slow the economy, and derail efforts to boost revenues.³³

36. Following President Abbas's rejection of Israel's offer to return only part of the clearance revenues, the Qatari government offered to lend \$100 million to the PA to cover government employees' wages and salaries while Israel and Palestine tried to solve their inter-governmental dispute.³⁴ However, the terms of the offered Qatari loan required repayment within

³² See Exh. 11, PA April 8, 2015 Presentation, at 3; Exh. 16, Letter No. MoF/MoF.I/346/2015 from PA Minister of Finance Shukry Bishara to Prime Minister of Israel Benjamin Netanyahu (April 9, 2015).

³³ See Exh. 4, IMF April 8, 2015 Letter, at 3.

³⁴ See Exh. 15, *Reuters* Article, *supra* n. 32.

four months. In light of the circumstances recounted above, the PA could not draw on the loan because of the certainty that the PA would default on the repayment of the loan.

37. The freeze itself, and Israel's subsequent decision to withhold the full return of the PA's clearance revenues, demonstrates the unilateral political and economic power that Israel can exercise over the Palestinian economy.

38. On April 17, 2015, the PA and Israel reached a compromise regarding the back-due clearance revenue transfers. The PA agreed to accept a total transfer of NIS 1.85 billion (\$462.50 million), which it used to pay PA employees and PA obligations that accrued both during and prior to the freeze.

39. This amount represents partial clearance revenues Israel withheld from December 2014 through April 2015, and does not include Israel's deductions of NIS 500 million (\$125 million) from the December through February revenues for alleged PA debts to the Israel Electric Company (which in fact are not a PA responsibility), and further deductions of NIS 150 million (\$37.50 million) for March and April. Israel and the PA also agreed to continue discussions regarding their respective obligations and payment processes going forward in order to avoid Israel's unilateral withholding of funds.

40. Israel's agreement to transfer the withheld clearance revenues to the PA does not come close to alleviating the PA's chronic liquidity crisis or to eliminating the PA's deficit or debt. Even when the PA receives the clearance revenues in the ordinary course, the PA runs at a substantial deficit.³⁵ Specifically, the PA would have realized deficits of NIS 295.4 million (\$75.17 million) in January 2015, NIS 732.9 million (\$187.92 million) in February 2015, and

³⁵ See Exh. 9, PA 2012 Fiscal Developments, at 5; Exh. 8, PA 2013 Fiscal Developments, at 9; Exh. 6, PA 2014 Fiscal Developments, at 3.

NIS 554.2 million (\$138.55 million) in March 2015.³⁶ Assuming receipt of the full amount of the withheld clearance revenues, the PA nonetheless projects a budget deficit in 2015 of NIS 4.462 billion (\$1.12 billion). The clearance revenue freeze simply caused a 2015 deficit approximately three times greater than it would have been otherwise (NIS 12.159 billion (\$3.04 billion)).³⁷

41. The IMF agrees that, even assuming the PA continues to receive all of the clearance revenues due from Israel, the PA's 2015 deficit will still exceed its 2014 deficit—particularly now that approximately 45% of the PA's 2015 expected foreign aid has been reallocated to or earmarked for reconstruction in Gaza after the 2014 war, as discussed further below in Paragraph 66:

The projection, which assumes resumption of clearance transfers, as well as full transfer of previously withheld revenues, is for an overall deficit of about 15 percent, nearly 3 percentage points higher than in 2014, with a financing gap in excess of \$400 million, or 3¼ percent of GDP, based on projected donor financing of \$1.5 billion.³⁸

42. Moreover, even before Israel froze the PA's clearance revenues, the PA was unable to fully service its public debt, including domestic and foreign loans, credit facilities owed to multilateral institutions like the World Bank and European Investment Bank, and to governments like Spain, Italy and China.³⁹

³⁶ See Exh. 25, PA Mar. 2015 Operations, at 1 (Revenues, Expenditures and Financing Sources (Commitment Basis)).

³⁷ See Exh. 11, PA April 8, 2015 Presentation, at 6.

³⁸ See Exh. 4, IMF April 8, 2015 Letter, at 2; Exh. 11, PA April 8, 2015 Presentation, at 4, 29 (detailing expected 22% decline in foreign aid in 2015).

³⁹ See Exh. 3, PA 2014 Operations, at 10 (Public Debt).

43. According to the IMF, in June 2014, the PA's debt to domestic and foreign banks and multilateral institutions totaled \$1.577 billion for short-term and long-term liabilities.⁴⁰ That amount did not include an additional \$407 million for bank overdrafts—which indicates that, even in 2014, the available credit at lending institutions was insufficient to meet the PA's borrowing needs.⁴¹

44. Once Israel froze the clearance revenues, however, the PA's debt intensified. In the single month spanning December 2014 to January 2015, the PA's total public debt grew from \$2.217 billion to \$2.233 billion.⁴² Between January 2015 and March 2015, similarly, the PA's total public debt grew to \$2.376 billion.⁴³

45. In addition to debt owed to banks and financial institutions, the PA is heavily indebted to the Palestinian Pension Fund for the State Administrative Employees ("PPF"). As of March 16, 2015, the PA owed the PPF \$1.636 billion from employee PPF contributions withheld by the PA from employee wages that had not been remitted to the PPF, and unpaid employer contributions from the PA for its own employees who participate in the PPF.⁴⁴

46. The PA cannot look to the PPF for assistance in posting litigation security. The PPF is a separately established legal entity, which makes payments for the benefit of retired Palestinian public sector employees. It would violate Palestinian law for the PA to try to access,

⁴⁰ See Exh. 17, IMF West Bank and Gaza Fund Report to the Ad Hoc Liaison Committee dated September 12, 2014 ("IMF Sep. 12, 2014 Report"), at 29 (\$606 million domestic bank loans + \$628 million Arab Financial Institutions loans + \$343 million International and Regional Institutions loans).

⁴¹ See *id.*

⁴² See Exh. 1, PA Jan. 2015 Operations, at 9 (Public Debt).

⁴³ See Exh. 18, PA Commitments Report dated March 24, 2015 ("PA Commitments Report"); Exh. 2, PA Feb. 2015 Operations, at 11 (Public Debt) (showing public debt in February 2015 of \$2.252 billion).

⁴⁴ See Exh. 18, PA Commitments Report; Exh. 11, PA April 8, 2015 Presentation, at 20.

for its own purposes, the limited amount of money held by the PPF. The PPF is in any event severely underfunded due to the PA's unpaid \$1.636 billion obligation to remit pension payments.

47. As noted above, the PA suffers from a chronic liquidity shortage, and does not have the cash it needs to support its short-term obligations. To cover its operational costs, as of March 24, 2015, the PA had obtained credit facilities and loans from local commercial banks, including the Bank of Jordan, the Cairo Amman Bank, the Arab Bank, the Bank of Palestine, and The National Bank (also a Palestinian bank) totaling \$699,092,391.⁴⁵

48. While the PA also maintains depository accounts at these institutions, the available balances in those depository accounts are at or near zero on a month-to-month basis. Any available balances in the PA's bank accounts are encumbered by each bank's right of curtailment—that is, the right of each bank to use PA deposit balances to reduce the bank's loan exposure to the PA in the event that the bank terminates or calls the PA's credit facilities or loans.

49. In any event, the PA's expenses run so far in excess of the PA's available funds that the PA's overdrafts at these banks exceed \$400 million as of March 31, 2015.⁴⁶ For instance, the PA's account at the Bank of Palestine was overdrawn by -\$127,700,164; Arab Bank was overdrawn by -\$176,830,544; the Bank of Jordan was overdrawn by -\$17,626,901; and, Cairo Amman Bank was overdrawn by -\$79,581,533.⁴⁷ The Petroleum Authority, which is under the control of the PA's Ministry of Finance, maintains separate bank accounts, but these also are

⁴⁵ See Exh. 18, PA Commitments Report.

⁴⁶ See *id.*

⁴⁷ See Exh. 19, PA Bank Account Statements for Bank of Palestine, Arab Bank, Bank of Jordan and Cairo Amman Bank as of March 31, 2015.

deeply overdrawn. For example, the Petroleum Authority's account at National Bank is overdrawn by -\$25,760,497 and at the Bank of Palestine by -\$20,907,551.⁴⁸

50. Because the PA has negative balances in these accounts, when the PA does have funds available to make a deposit into the account, the deposited money is not available to withdraw because the banks immediately apply those funds against the overdraft balance. PA expenses that draw on the account are therefore not paid from existing funds, but rather increase the overdraft balance.

51. As a result, though undesirable, the PA's unavoidable approach to this persistent financial crisis has been to accumulate arrears. For example, the PA withholds payments to the private sector for goods and services, minor capital, development, interest payments, and tax refunds.⁴⁹ The PA's public debt and monthly deficits do not include the PA's accumulating arrears payment obligations.

52. Growing arrears presented a problem even before Israel froze the clearance revenues; in 2014, PA arrears totaled NIS 2.78 billion (\$778.71 million), of which NIS 1.36 billion (\$380.95 million) was owed to the private sector.⁵⁰

53. In 2014, the PA made paying down these arrears a strategic imperative. The PA reduced its arrears by NIS 300 million (\$84.03 million) in 2014, and planned to pay another \$250 million for private sector arrears in 2015, with a goal of eliminating arrears altogether by 2016.⁵¹

⁴⁸ See Exh. 18, PA Commitments Report; Exh. 20, Petroleum Authority Bank Account Statements for National Bank and Bank of Palestine as of March 31, 2015.

⁴⁹ See Exh. 6, PA 2014 Fiscal Developments at 4, 17.

⁵⁰ See *id.*

⁵¹ See Exh. 10, PA Jan. 2015 Presentation, at 33-34; Exh. 11, PA April 8, 2015 Presentation, at 21.

54. Israel's freeze of the PA clearance revenues eliminated revenue earmarked to pay the NIS 2.78 billion (\$778.71 million) in arrears left over from 2014, however.⁵² The PA also continued to accumulate new arrears in the first quarter of 2015. As a result, as of March 31, 2015, the PA owed total arrears to the private and public sector of NIS 4.617 billion (\$1.15 billion).⁵³ Even once Israel released the withheld clearance revenues in April 2015, the PA was still unable to fully repay its arrears, let alone its total debt obligations.

55. As of March 24, 2015, the PA's total current debt from all sources was \$4.977 billion.⁵⁴ The largest components of this debt include: (i) \$699,092,391 owed to local banks, with an additional \$410,995,354 owed to these same banks for overdrafts on currently overdrawn PA bank accounts; (ii) \$1.066 billion in foreign loans; (iii) \$567,325,899 owed by the PA to the private sector; and, (iv) \$1.636 billion owed to the PPF.⁵⁵ All of the loans to the PA are earmarked to pay existing and past accrued PA operational costs, such as employee wages.

56. Taken together, the PA's substantial deficit, debt, and constrained sources of revenue result in a very poor credit rating. The PA accordingly is unable to increase its debt or to secure additional lines of credit to cover a bond securing the judgment in this case. Furthermore, it should be emphasized that both industry guidelines and regulations pertaining to local banks' acceptable lending ratios preclude the possibility of increasing those banks' risk exposure by lending additional money to the PA. Palestine's Law on Public Debt places a limit on public

⁵² See Exh. 11, PA April 8, 2015 Presentation, at 21.

⁵³ See Exh. 6, PA 2014 Fiscal Developments at 4 (showing arrears of NIS 2.78 billion for 2014); Exh. 2, PA Feb. 2015 Operations, at 3 (Consolidated Statement on Fiscal Operations and Arrears); Exh. 25, PA Mar. 2015 Operations, at 3 (Consolidated Statement on Fiscal Operations and Arrears) (showing arrears of NIS 1.837 billion for Jan.-Mar. 2015).

⁵⁴ See Exh. 18, PA Commitments Report .

⁵⁵ See *id.*

borrowing at 40% of GDP, while Palestinian banks consider it unsafe to carry more than 25% exposure to a single borrower.⁵⁶

57. Because of the PA's poor financial condition, sureties with whom the PA has explored the possibility of obtaining a bond to secure the judgment in this case have informed the PA that they would require upfront, non-refundable payments simply to engage in discussions about a bond. Further, those sureties have informed the PA that they would require security equal to 100% of the judgment amount, plus additional fees and costs. It would be impossible for the PA to meet those terms, and the PA could not service the debt on a bond with those terms. In addition, other sureties have said that they would not consider issuing a bond to secure the judgment in this case because of what the sureties have described as political risk, meaning both reputational risk to them and the risk of repayment by a foreign government.

58. Even if the PA could find some other way to borrow money in order to obtain an appeal bond or post security in this case, it would be morally irresponsible for the PA to do so. Palestine has severe unemployment and poverty rates. Unemployment exceeds 27%, and only one out of four university graduates is able to find employment. Over 20% of the population lives below the poverty line, subsisting on one dollar a day or less. The government already has been forced to curtail or eliminate many of its public and social service programs, and the PA's more than 155,000 employees will just now begin receiving full wages after months of being paid a fraction of their salaries.⁵⁷

⁵⁶ Exh. 26, IMF, "West Bank and Gaza Selected Issues," Sept. 11, 2013), at 3, *available at* <http://www.imf.org/external/country/WBG/RR/2013/091113a.pdf> (Public Debt law); Exh. 27, The World Bank, "Bank Regulation and Supervision Survey Dataset," at Line 370, *available at* <http://econ.worldbank.org/WBSITE/EXTERNAL/EXTDEC/EXTGLOBALFINREPORT/0,,contentMDK:23267421~pagePK:64168182~piPK:64168060~theSitePK:8816097,00.html> (25% limit).

⁵⁷ See Exh. 11, PA April 8, 2015 Presentation, at 10; Exh. 12, "Will ICC membership help or hinder the Palestinians' cause?," *BBC News*, *available at*: <http://www.bbc.com/news/world-middle-east-30744701> (last visited

A Long-Term PA Economic Crisis.

59. These economic hardships are just the latest in a long series of PA financial problems. The PA has long struggled with deficit issues and accumulating debts and arrears in payments in order to finance the PA's government expenditures.

60. The Palestinian economy has historically been depressed because Israel controls and restricts all major Palestinian border crossings and the free movement of people and goods. Other than the now-closed Rafa border crossing with Egypt, all West Bank and Gaza borders are controlled by Israel. Israel's movement and access restrictions disrupt labor and trade flows, industrial capacity and basic commerce internally and with neighboring countries, including Israel and Egypt. By default, then, the Palestinians are obliged to import most of their goods either from the Israeli market or through Israeli ports, which, in addition to Israel's control of clearance revenues, gives Israel enormous influence over the Palestinian economy.

61. Following Israel's military attack on Gaza in late 2012, economic growth in 2013 slowed to just 1.9 percent, and in early 2014, economic growth actually contracted, pushing the West Bank and Gaza into a recession.⁵⁸

62. In July and August 2014, warfare in Gaza caused the PA economy to further decline.⁵⁹ The 2014 conflict led independent observers, including the IMF, to characterize the

April 29, 2015) ("As a result [of the clearance revenue freeze], 160,000 Palestinian government employees were paid only 60% of their salaries for three months.").

⁵⁸ See Exh. 17, IMF Sep. 12, 2014 Report, at 5; Exh. 21, The World Bank, "Economic Monitoring Report to the Ad Hoc Liaison Committee," dated September 22, 2014 ("World Bank Sep. 22, 2014 Report"), at 9.

⁵⁹ See Exh. 22, IMF, "West Bank and Gaza Report on Macroeconomic Developments and Outlook," dated June 30, 2014 ("IMF Jun. 30, 2014 Report"), at 4; Exh. 17, IMF Sep. 12, 2014 Report at 1, 4, 5, 10, 18.

Palestinian economy as having “deteriorated substantially,” due to Israeli “restrictions on movement and access.”⁶⁰

63. The United Nations reported that, during the 2014 war, “Gaza witnessed extensive aerial bombardment, naval shelling and artillery fire, resulting in the widespread loss of life and livelihoods.”⁶¹ The war destroyed or significantly damaged hundreds of thousands of Palestinian homes, approximately 140 schools, half of its hospitals and health centers, its only power plant and “much of the water and sewage infrastructure.”⁶²

64. The United Nations called the damage “unprecedented since the beginning of the Israeli occupation in 1967,” and stated the “[d]amage to public infrastructure was also unprecedented, leaving hundreds of thousands of people without adequate services, including electricity, clean water and quality healthcare.”⁶³ In Gaza City alone, for example, a city of more than 800,000 people, approximately 20-25% of all housing stock was damaged.⁶⁴ More than 400 factories were “destroyed or severely damaged,” exacerbating the already ruinous unemployment rates in Gaza.⁶⁵

⁶⁰ See Exh. 17, IMF Sep. 12, 2014 Report at 1, 4, 5, 10, 18; Exh. 22, IMF Jun. 30, 2014 Report, at 4;

⁶¹ Exh. 28, U.N. Office for the Coordination of Humanitarian Affairs, Occupied Palestinian Territory Situation Report dated September 4, 2014, available at: https://www.ochaopt.org/documents/ocha_opt_sitrep_04_09_2014.pdf (last visited May 1, 2015); Exh. 29, U.N. Relief and Works Agency, Gaza Situation Report 90, dated April 30, 2015, available at <http://www.unrwa.org/newsroom/emergency-reports/gaza-situation-report-90> (last visited May 1, 2015) (together, “U.N. Reports on Gaza Devastation”).

⁶² Exh. 17, IMF Sep. 12, 2014 Report at 10; *see also supra* n.61.

⁶³ *See supra* n.61.

⁶⁴ Exh. 30, Burke, J., “Gaza homes ‘uninhabitable’ as tens of thousands come back to rubble,” *The Guardian*, available at <http://www.theguardian.com/world/2014/aug/11/damage-gaza-homes-israel-hamas-conflict> (last visited May 1, 2015).

⁶⁵ Exh. 17, IMF Sep. 12, 2014 Report, at 10.

65. The PA and the international donor community agree that the Gaza reconstruction will cost many billions of dollars.⁶⁶ To help pay for reconstruction and humanitarian needs in Gaza, the PA and foreign aid donors have reallocated to or earmarked expressly for Gaza approximately 45% (\$706 million) of the \$1.5 billion the PA anticipates receiving in foreign aid in 2015, which the PA would have used for budget support and development financing.⁶⁷ This will leave the PA with only about \$800 million in aid for social services and economic recovery in the West Bank.⁶⁸ The PA has already allocated \$381 million in donor aid to Gaza efforts by providing direct assistance through government agencies for items such as housing, healthcare and water, and by providing over \$200 million to third-parties providing support, such as the U.N. Relief and Works Agency.⁶⁹ That such a substantial portion of the PA foreign aid must go to emergency and reconstruction services in Gaza means that the PA's liquidity crisis will deepen, and that its budgetary shortfall will only grow.

Foreign Aid.

66. Apart from the clearance revenues, the PA is almost entirely dependent on foreign aid to meet its budget and development obligations. In 2014, the donations and foreign aid accounted for 30% of the PA's expenditures.⁷⁰ Although foreign aid does not eliminate the PA's

⁶⁶ Exh. 31, Browning, N., "Palestinians put Gaza reconstruction cost at \$7.8 billion," *Reuters*, available at <http://www.reuters.com/article/2014/09/04/us-mideast-gaza-reconstruction-idUSKBN0GZ1N720140904> (last visited May 1, 2015); Exh. 32, Gordon, M., "Conference Pledges \$5.4 Billion to Rebuild Gaza Strip," *The New York Times*, available at http://www.nytimes.com/2014/10/13/world/middleeast/us-pledges-212-million-in-new-aid-for-gaza.html?_r=0 (last visited May 1, 2015).

⁶⁷ See Exh. 11, PA April 8, 2015 Presentation, at 32 ("the PA has made remarkable efforts to pass on reconstruction and humanitarian aid to Gaza").

⁶⁸ See Exh. 11, PA April 8, 2015 Presentation, at 29.

⁶⁹ See *id.*, at 32.

⁷⁰ See Exh. 6, PA 2014 Fiscal Developments, at 5.

deficits, every dollar of foreign aid is a dollar that the PA does not have to obtain through a loan or accumulated arrears.

67. Between 2007 and 2014, the United States was Palestine's second largest single source of financial aid at \$1.302 billion.⁷¹ During the same period, the European Union provided \$3.558 billion and the World Bank Trust Fund provided \$1.280 billion to the PA.⁷²

68. While donor nations may commit to provide certain levels of assistance in a given month or year, the PA does not know how much it will actually receive until the payment arrives. For example, while the PA expected to see an increase in foreign aid from 2012 through 2015 to help ease its recurring deficit,⁷³ in fact, foreign donors reduced their support. In 2014, foreign budgetary support decreased 19% from 2013, while development financing was 33% under budget in 2014.⁷⁴ Donor aid is expected to continue to decline in 2015 by another 22%, as compared to 2014.⁷⁵ Foreign aid is therefore insufficient to make up the PA's financing gap whether or not the PA is receiving clearance revenue transfers.

69. The allocation of foreign aid to the PA is restricted. In fact, most foreign aid, approximately 60% in 2014, is allocated by the donor countries to specific purposes, such as pre-selected and approved development projects, wage bill support, and social welfare payments. By way of example, the U.S. aid is earmarked primarily for the financing of fuel imports from Israeli refineries and for the payment of hospital bill arrears.

⁷¹ See Exh. 23, PA Ministry of Finance Summary of Main Donors Contribution ("PA Summary of Donors").

⁷² See *id.*

⁷³ Budgeted projected foreign aid shows expected increase in aid from 2012 to 2015: 2012 - \$0.93 billion; 2013 - \$1.42 billion; 2014 - \$1.63 billion; 2015 - \$1.78 billion. See Exh. 24, PA Budget Projections for 2014, at 4.

⁷⁴ See Exh. 6, PA 2014 Fiscal Developments, at 4.


⁷⁵ See Exh. 11, PA April 8, 2015 Presentation, at 4.

70. That the majority of the foreign aid is earmarked means that it cannot be diverted or used for any other purpose, including for use as collateral for a bond in U.S. litigation. With restricted aid, certain donors transfer the foreign aid money directly to the beneficiary or the vendor, while others will not disburse funds until they approve the ultimate recipient of the donor aid. The majority of foreign donors audit the disbursements of the funds to ensure compliance with those restrictions.

71. The foreign aid not earmarked for specific projects goes to pay salaries and pension obligations for PA government employees, to fund social services (including for public safety, healthcare, education, public housing and transportation), and to pay the service on existing debt or to pay past arrears accumulation. The PA cannot divert these unrestricted donor funds to secure a bond without causing the international donor community to reduce aid to the PA or, at a minimum, to increase restrictions on the use of the funding—further reducing the amount of unrestricted aid that can be directed to the areas of greatest need.

72. Failure of the PA to meet its bare minimum obligations to the Palestinian people could cause a social and security upheaval.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on April 30, 2015.



Shukry Bishara
Minister of Finance and Planning
The Palestinian Authority